IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6381 of 1998
With
SPECIAL CIVIL APPLICATION No. 1479 of 1999
With
SPECIAL CIVIL APPLICATION No. 10295 of 1999
With
SPECIAL CIVIL APPLICATION No. 3619 of 1999
With
SPECIAL CIVIL APPLICATION No. 9574 of 1999
With
SPECIAL CIVIL APPLICATION No. 6089 of 2000
With
SPECIAL CIVIL APPLICATION No. 7725 of 2000
With
SPECIAL CIVIL APPLICATION No. 12339 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SARDAR PATEL CHARITABLE TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
SCA Nos.638/98 & 1479/99:

MS MAMTA R VYAS for Petitioners
MS ARCHANA RAVAL, AGP for Respondent 1
MR AD OZA for Respondent(s) : 2

SCA Nos.10295/99, 3619/99, 9574/99, 6089/2000 & 7725/2000:
MS MAMTA R VYAS for Petitioners
MS ARCHANA RAVAL, AGP for Respondents

SCA No.12339/2000:

Mr Nirzar Desai for the petitioner
Ms Archana Raval, AGP for respondent No.1.
Mr AD Oza for respondent No.3
Rule served to respondents Nos.2 & 4.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/07/2006

ORAL JUDGMENT

1. In this group of petitions, the petitioners have a common cause of action. The petitioners have received necessary recognition and permission for running Secondary and Higher Secondary schools in the State of Gujarat. Such permissions have been granted at the first instance either by the Gujarat Secondary and Higher Secondary Board or by the State Government in appeal. All the petitioners were granted such permission to run their schools on the condition that the Government will not bear the burden of financing such schools. In short, the petitioners had received permission from the respondents to start their new schools without grant-in-aid. Later on, the petitioners applied to the authorities to give grant to run their respective schools. The respondents did not

accede to their requests. The petitioners have, therefore, at different stages under different circumstances approached this Court. Though there are certain minor factual differences, the central issue in all these petitions is common. The short question that has been placed before this Court for consideration and decision is whether the petitioners are entitled to receive grant-in-aid for their schools from the Government. In other words, the question is whether the Government erred in rejecting the request of the petitioners to release grant in favour of their educational institutions.

2. For the purpose of deciding the above controversies, some of the factual aspects brought on record can be noted.

3. Special Civil Application No.1479 of 1999 has been filed by one Ankur Kelvani Mandal. The petitioner therein applied for starting school in the secondary section. Such an application was rejected by the Board on 9.8.91. The petitioner, therefore, filed an appeal and the State Government by an order dated 4.8.94 granted permission to the petitioner to run the

school. Such permission, however, was with the condition that the petitioner shall not claim grant-in-aid for its school. It may be noted that though permission was granted by the State Government in the year 1994, case of the respondents is that the the petitioner did not start its school right up to 2000 and thereafter also, after running the school for about five years, the petitioner once again closed down the school. To these factual averments, learned advocate for the petitioner has not raised any dispute. In fact, these aspects are also borne out from the affidavit filed by the petitioner. The case of the petitioner is that for want of financial aid from the Government, the petitioner could not start the school and the school-management, therefore, made series of representations to the State Government for giving grant to the petitioner to run its school. Such representations were made in the years 1995 to 1998. Since no response was available from the Government, the petitioner filed Special Civil Application No.5699 of 1998. The said petition came to be disposed by an

order dated 5.11.98 wherein the learned single Judge of this Court directed the State Government to consider the case of the petitioner for releasing of grant. It was observed that the case of the petitioner cannot be discriminated from other similar cases. It was observed that the undertaking given by the petitioner (not to claim grant even in future) would not disentitle the petitioner from such consideration since at the time of giving the undertaking the petitioner was not aware of the fact that grant has been given to other similarly situated schools.

3.1 Pursuant to the said order dated 5th November 1998, passed by this Court, the case of the petitioner was considered by the State Government, but turned down by an order dated 18.12.98. In the said order also, the State Government once again reiterated that the petitioner had been granted permission to start the school on the condition that the petitioner will not claim grant from the Government and in that view of the matter, request of the petitioner cannot be accepted.

3.2 The petitioner has filed an additional affidavit dated 19th April 2000 and placed certain additional averments on record. Through the averments made in the petition as well as made in the above-mentioned additional affidavit, in the nutshell, the case of the petitioner is that despite its undertaking given to the Government for not claiming grant even in future, the case of the petitioner cannot be completely shut out of consideration and that large number of similarly situated other institutions and schools have been granted benefit of grant-in-aid even subsequently despite similar undertakings having been given by them also. Certain orders passed in favour of other institutions have also been placed on record to seek parity.

3.3 In Special Civil Application No.6381 of 1998, the case of the petitioner Trust is that the petitioner-Trust was desirous of starting a secondary school. The petitioner therefore applied to respondent No.2 Board on 30th August 1991. The application was rejected by the Board on 24th November 1992. The petitioner appealed before the State Government against the decision

of the Board. The appeal was allowed and permission to start a secondary school was granted by the State Government by an order dated 18.4.94, however, on a condition that the school will not receive grant in aid from the Government. In this case also, the petitioner had agreed to accept the permission to run the school without grant-in-aid facility.

3.4 It is the case of the petitioner that the petitioner's school was situated in an economically backward area and that the petitioner Trust therefore required the grant-in-aid facility to run its school. Such requests were made periodically to the State Government. However, only on the ground that the petitioner had agreed to start the school without the facility of grant, the Government did not accede to the request of the petitioner. Here also, the petitioner has tried to set up a case of hostile discrimination alleging that under similar circumstances, the respondents have released grant in favour of several other schools.

3.5 In Special Civil Application No.10295 of 1999, facts are more or less similar except that the

petition is pertaining to permission granted by the Government to start 11th standard class in science stream. The petitioner was already running a school in secondary section with grant-in-aid facility. Permission to start standard 11 class in science stream was, however, given without grant in aid. The petitioner therein though initially started standard 11 class some time in the year 2000, was later on forced to close down the said section since last year for want of funds. The recognition of the school, however, has not yet been cancelled.

3.6 Remaining petitions, involve no different factual aspects. It is, therefore, not necessary to record the factual aspects in those petitions. Suffice it to say, all the petitioners have a common grievance of not being granted benefit of grant by the Government. It may also be noted that all schools were granted permission at the outset on the condition that the schools will not receive grant from the Government.

4. Affidavits have been filed in Special Civil Application No.6381 of 1998 and also in Special Civil Application No.1479 of 1999. The

respondents have opposed the claim made by the petitioners. Broadly stated, it is suggested that the question of release of grant is a matter of Government policy. The applications of the petitioners for starting new schools were considered within the parameters of such policy. It was found appropriate that permission can be granted only on the condition that the schools will not receive grant in aid. It was, thereafter, not open for the school-managements to turn around and claim grant-in-aid facilities under any circumstances.

4.1To dispel the averments of discrimination, it is contended, inter alia by the State Government in its affidavit that grant was made available to such of the schools which were situated in tribal areas of absolute economic backwardness. Such requests were granted as special cases. It is suggested that petitioner in Special Civil Application No.1479 of 1999 runs a school in Godhra town which cannot be considered a tribal area or backward area.

4.2 In Special Civil Application No.6381 of 1998, two additional affidavits came to be filed.

First affidavit dated 8.3.2006 is by Shri P.Panneervel, Principal Secretary, Education Department, State of Gujarat. Yet another affidavit came to be filed by one Shri A.P.Dhaduk, Deputy Secretary, Education Department, State of Gujarat which is also dated 8th March 2006. These affidavits were filed pursuant to certain interim observations and directions issued by this Court on 13th February 2006. Reference will be made to the said order passed by this Court as well as the contents of the above mentioned affidavits at a later stage.

5. On the basis of the above factual matrix, learned advocate Ms.Vyas for the petitioners had made detailed submissions. It was her contention that though initially all the petitioners were granted permission by the State Government to start schools without the facility of grant, the same cannot prevent the petitioners from seeking grant-in-aid for all times to come. She submitted that the petitioners had made applications to the authorities and made out a case for release of the grant. Such applications should have been

considered favourably. It is pointed out that in number of cases, the applications were not considered at all on merits simply stating that once the applicant has accepted the permission to run the school without the facility of grant, the application for release of grant cannot be considered. She pointed out that in fact, in case of petitioner of Special Civil Application No.1479 of 1999, this Court had in terms stated that the application of the petitioner should be considered despite the earlier undertaking that the petitioner shall not claim grant. Despite this direction by this Court, the Government once again turned down the request of the petitioner on the sole ground that earlier the petitioner had agreed not to claim grant.

5.1 It was additionally contended that the petitioners are discriminated in terms of consideration of giving grant. It was contended that large number of similarly situated institutions were provided the facility of grant, but the petitioners, though identically placed were not given such treatment. It was, therefore, contended that the State Government has

been following pick and choose policy in the matter of grant-in-aid.

5.2 It was additionally contended that the petitioners are running schools with great difficulty. Financial constraints and resource crunch has led to certain institutions closing down the schools. It was submitted that though case was made out by the petitioners to give grant to the petitioners, the Government has not released the grant and the respondents, therefore,should be directed to release the grant from the date of the applications made by the institutions. It was alternatively submitted that in any case, the applications of the petitioners should be considered on the basis of the factual material obtaining as on the date when such applications were made. She submitted that even if the petitioners are not held entitled to receive grant for the past period, at least their applications be considered on the basis of the situation prevailing at the relevant time.

5.3It may also be noted that it has been the case of the State Government that to achieve uniformity while considering such applications, a policy is

being formulated by the State Government to consider the cases on special ground. In this regard, it was contended by the learned advocate for the petitioners that such new policy cannot be applied to the petitioners since their applications are pending with the authority since many years. It was, therefore, urged that the cases of the petitioners should be considered in light of the earlier policy of the Government and on parity with other institutions which have been granted such facilities in the interregnum.

6. On the other hand, learned advocate Shri AD Oza appearing for the Board and learned AGP Ms.Archana Raval appearing for the State opposed the petitions.

7. Learned advocate Shri Oza submitted that in most of the cases, the Board had initially declined to grant permission to the petitioners to start the schools, but the State Government in appeal permitted starting of schools, however, with specific condition that the petitioner will neither be entitled to receive grant nor will they claim such grant in future. It is, therefore, not possible for the petitioners to

apply for grant subsequently.

7.1It was also submitted that in several cases, the petitioners have closed down their schools and such institutions under no circumstances can seek grant from the Government. It was also contended that the question of bearing the burden of starting a new school is a matter of Government policy and the same depends on several factors including the financial constraints of the Government. It was also contended that only under exceptional circumstances as special cases, the Government would consider releasing of grant once an institution has been permitted to start a school without the benefit of grant. Such special cases depend on facts of individual applicant and it would not be possible to compare different set of circumstances to make out a case of discrimination. It was further submitted that cases to which reference is sought to be made by the petitioners pertained to the institutions located in remote backward areas of predominantly tribal population. In short, the ground of discrimination was sought to be repelled.

7.2 Reliance was placed on a decision of the

learned single Judge of this Court dated 17th June 2000 rendered in Special Civil Application No.5888 of 1998 in the case of Vidhya Sagar Education Trust v. Secretary. The said decision, the learned single Judge of this Court was pleased to observe that each case depends on its own facts and circumstances for the purpose of conversion of schools from non-grant to grant-in-aid schools. It was pointed out that the decision of the learned single Judge in the case of Vidhya Sagar Education Trust, though carried in appeal, the LPA was withdrawn by the appellant-petitioner.

7.3 Reliance was also placed on decision of the learned single Judge in the case of Atladara Kelavani Mandal v. State, 2004(1) GLR 244 wherein the learned single Judge was pleased to observe that there is no compulsion on the part of the educational institution to receive grant-in-aid and that the action of the State to provide for grant to the education institution is essentially a policy matter for which the State should have the liberty to decide its own yard-stick.

7.4 Reliance was also placed on a decision of the

learned single Judge dated 20th April 2006 passed in Special Civil Application No.4707 of 2001 in the case of Adarsh Pragati Mandal v. State of Gujarat. In the said decision, the learned single Judge of this Court was pleased to observe that giving of grant is not automatic, but the sme is subject to fulfillment of certain eligibility criteria and consideration of factors such as financial viability. It was observed that to claim grant-in-aid is not a legal right of the petitioner much less fundamental right.

7.5 Reliance was also placed on a decision of the learned single Judge dated 30th July 2002 rendered in Special Civil Application No.3108 of 2002 in the case of Anjuman Education Trust v. State of Gujarat wherein also, the learned single Judge had taken a similar view.

8. Learned AGP Ms.Raval, in addition to adopting the arguments advanced by learned advocate Shri Oza, further submitted that the petitioners had in terms agreed not to avail of grant or claim such grant even in future. They had given such undertaking to the Government. She pointed out that Chapter 18 of the Grant-in-aid Code

pertains to releasing of grant by the Government. Rule 84 of the Grant-in-aid Code specifically provides that releasing of grant is at the discretion of the Government. She, therefore, submitted that the State Government in its policy consideration found that it was not possible to give permission to the petitioners to start schools with grant facility. Subsequently, there was no change in circumstances warranting a different consideration. She submitted that the petitioners cannot claim parity since in other cases, the Government decided to release grant considering the special facts and circumstances of each case. It is further submitted that the petitioners have no legal right much less fundamental right to claim grant. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of State of Maharashtra v. Lok Shikshan Sanstha, AIR 1973 SC 588 wherein in para 5 of the decision, the Hon'ble Supreme Court observed that Grant-in-aid Code provided for certain restrictions in starting of the institutions and even if Article 19 can be

invoked, such restrictions were reasonable restrictions.

9. Before deciding the legal controversy arising in this group of petitions on the basis of the arguments advanced by the learned advocates, it would be necessary to take note of certain developments which took place during the pendency of these petitions. It appears that while hearing this group of petitions, learned single Judge of this Court (Coram: M.R.Shah, J.) on 1st February 2006 took note of the averments made by the petitioners that number of schools have been granted the benefit of grant-in-aid though initially such schools were not granted the same. The Court also took note of the averments made on behalf of the State Government that such schools were converted into grant in aid schools as special cases. The Court, therefore, directed the State Government to file a reply pointing out the definition of "Special Case" and asked to specify the criteria for considering and treating the schools case as special case. Pursuant to the said order dated 1st February 2006, it appears that one Shri

Panneervel, Secretary, Education Department was present before the Court. Time was prayed for on behalf of the State Government to place on record the norms for treating the request as a special case. This Court therefore passed the following order on 13th February 2006 in Special Civil Application No.6381 of 1998.

"In response to the notice issued by this court, Shri Paneervel, Secretary, Education Department is present in the court. Ms Archana Raval, learned AGP prays for time to file reply and to place on record the norms treating a case as a special case for converting non-granted school to granted school. Shri Paneervel has submitted that as such the decisions are taken at the highest level and the department is only implementing the same. However, he wants to place on record the norms and other things and to point out whether the said norms are in fact applied uniformally to all other similar institutions or not. Till further orders are passed by this court, the respondents are restrained from converting any secondary/higher secondary school in the State from non-granted to granted school without the prior permission of this court. If, there are any extraordinary exigencies, it will be open for the respondents to move an appropriate

application for considering the individual case, which can be dealt with by this court on such appropriate application. A specific reply to be filed on or before 23.2.2006. S.O. to 24.2.2006."

9.1Pursuant to the directions issued by this Court on 1st February 2006 and 13th February 2006, two affidavits came to be filed on behalf of the respondents. One was filed by One Shri P.Panneervel, Principal Secretary, Education Department being an affidavit dated 8th March 2006. Yet another affidavit also dated 8th March 2006 came to be filed by one Shri A.P.Dhaduk, Deputy Secretary, Education Department. Contents of these affidavits need to be noted at some length.

9.2 In his affidavit Shri P.Panneervel stated that by resolution dated 30th June 1999, the Government has fixed certain norms for the purpose of sanctioning grant to the educational institutions which are as follows:-

"i. For the secondary schools, there should be no school within the radium of 10 kms and for the tribal area there should be no school existing within 5 kms. Radius.

ii. Regarding higher secondary schools, there should be no school within the radium of 15 kms. From the existing school and for the tribal areas there should be no school within the radius of 10 kms

iii. In urban areas the grant-in-aid for secondary schools shall be considered on the basis of the population of 10,000 per school.

iv. For higher secondary schools in urban areas, the grant-in-aid shall be considered on the basis of one school per 30,000 population."

It is further stated that recognition is being given to self-finance school with condition that they would not seek grant-in-aid in future also. However, many schools make applications to convert them into grant-in-aid schools. Considering the budget allocation during the relevant financial year and considering the Government criteria, some schools have been considered as special cases to sanction grant in aid. It may happen that some schools may fall with the said criteria, but considering the budgetary limits, all such applications cannot be granted or be given equal treatment and in any case, once self

finance schools have accepted recognition with the condition not to apply for grant in future, they cannot insist on grant in aid assistance.

9.3It is further stated in para 4 of the affidavit that in view of the order passed by this Court on 13th February 2006, the Government proposes to fix certain norms for considering the applications as special cases. Para 4 of the affidavit reads as follows:

> “4. It is stated that in view of the order passed by this Hon'ble Court dated 13.02.2006 the Government proposes to fix the following norms for to consider a special case for grant-in-aid approval:
>
> a. Various backward communities operate schools on non-grant basis with a view to obtain sufficient donation from community leaders and others. However, those cases who are not able to obtain sufficient donations and those schools belonging to low rate of literacy may be considered as special case.
>
> b. Those villages, which are less than 35% female literacy rate attracted focus of the State Government under Kanya Kelavani Rath. Such schools meant only for girls' education shall be considered as special education.
>
> c. The schools located in interior part of the

State or hilly areas having insufficient facilities like roads etc., normally have been deprived of higher education, also shall be considered as a special case.

d. Since last one and a half decade, large numbers of labourers migrate towards urban centres. To encourage their wards, education, most of such migrated communities establish residential schools. However, those who could not mobilize sufficient financial resources also shall be considered as special case."

It is further stated that the above norms shall be considered within the ambit of annual budget for considering the applications for special cases.

9.4In the affidavit dated 8th March 2006 filed by Shri A.P.Dhaduk, Deputy Secretary, Education Department, it is stated that certain categories are considered as special categories. Following criteria are stated to be falling within the special categories.

"4. It is stated that however, the case which have been considered under the special category fall under the following criteria.

i. For promoting and encouraging girls education.

ii. Schools for the students, situated in the tribal areas.

iii. Schools for the students of Scheduled Castes and Scheduled Tribes.

iv. Schools for the students of socially and economically backward classes.

v. Schools for the children of salt workers, fishermen, daily wage labourers, sugarcane labourers, etc.

vi. Schools for the purpose of students in respect of linguistic minorities.

vii. Schools for disabled students.

viii. Schools having hostel facilities for the students coming from remote areas.

ix. Schools not situated within 10 kms. Of area from the existing schools."

It is further stated that all the applications received during the financial year for conversion from non-grant-in-aid school to grant-in-aid schools may not be possible to be accepted because of limited budgetary allocation and the authorities have to strike a balance between the budget and the need for the educational institutions seeking such conversion. It may however be noted that there is no guidelines issued by the Government and apparently the above policy is being followed rather rarely.

10.It can thus be seen that during the pendency of these petitions and pursuant to the orders passed by this Court, the State Government is in the process of formulating its policy for considering the cases of the institutions to convert them from non-grant-in-aid schools to grant-in-aid schools as special cases. These aspects of the matter will be adverted to at some length at a later stage.

11.I have considered the material on record and the submissions made by the learned advocates appearing for the parties. All the petitioners were granted permission either by the Board or in appeal by the State Government to start schools without the benefit of grant. The petitioners accepted such terms and recognitions with clear understanding that the Government will not bear the burden for running the schools. In fact, all the petitioners agreed not to claim grant even in future. In that view of the matter, it can be seen that the petitioners have no right to insist that their cases for conversion from non-grant-in-aid schools to grant-in-aid schools must be accepted

by the State. The question of providing grant for secondary and higher secondary education must depend on the Government policy and budgetary allocation. The petitioners who received permission and recognition on a clear understanding that the Government will not bear the financial burden of running such institutions cannot claim, as a matter of right, that their applications must be accepted. So much is clear from number of decisions reference to which have already been made hereinabove. In the case of Vidhya Sagar Education Trust (supra), this Court had observed that the decision depends on on its facts and local circumstances such as availability of the educational facilities to the students. In the case of Atladara Kelavani Mandal (supra), the learned single Judge of this Court observed that the action of the State providing grant-in-aid is essentially a policy matter and the State should have liberty to decide its own criteria. Once an institution voluntarily accepts that it would abide by various conditions, it would not be justified in raising a grievance that

certain conditions are harsh. In the case of Adarsh Pragati Mandal (supra), also learned single Judge observed that giving of grant is not automatic and the same must be subject to certain criteria including financial viability. It was observed that to claim grant-in-aid is not a legal or fundamental right and the same is a policy matter of the Government which can be based on ground realities and factual situation in each case. It is also observed by the learned single Judge in the case of Vidhya Sagar Education Trust (supra) that each case must depend on its individual facts and it would not be possible to compare two different cases.

12. The petitioners who had thus received permission to start their schools without the facility of grant, therefore, cannot, as a matter of right, claim that their applications for conversion into grant-in-aid institutions must be accepted.

13. The entire problem, however, cannot be decided on this basis alone. Though the petitioners have no legal right to insist that they must get grant as a matter of right, however limited, the petitioners do have a right to seek that their

applications be considered by the authorities on the basis of the prevalent policy. Despite the petitioners having been informed in clear terms that they will not receive grant and despite the petitioners having clearly agreed that they will not claim grant even in future, their applications cannot be kept out of consideration by the Government for all times to come under all circumstances. This is so since the Government itself in large number of cases has considered the applications for conversion from non-grant-in-aid institutions to grant-in-aid institutions. Even if such requests are accepted on rare occasions and only upon special case being made out, nevertheless,there are large number of instances brought on record wherein the State Government itself despite such clear understanding and undertakings by the institutions considered and granted such applications for conversion. In fact, the case of the petitioners has been that in number of cases, Government decided to release the grant even without formal application by the institutions. Even if the question of release

of grant is as matter of policy of the Government, surely such policy cannot be implemented indiscriminately. The policy should be implemented uniformly and similarly situated persons should be treated similarly. Any deviation from such a path without valid reasons would be opposed to the equality clause enshrined in Article 14 of the Constitution and would be struck down by the court of law. In the nut-shell, therefore, though the petitioners have no legal right to insist that they must be given grant by the Government, their applications must be considered by the Government on the basis of some uniform policy which would apply to all similarly situated cases.

14. It is in this regard that the petitioners have urged that the Government and its officials are following a pick and choose policy and that in large number of cases, such conversions have been granted without valid reasons and in some cases even without formal applications by the institutions. Suffice it to say that it was on account of such allegations that at one stage

this Court directed the respondents to file detailed affidavit through its order dated 13th February 2006. Pursuant to the said order of 13th February, 2006, the State Government has come up with a policy declaration pointing out that the Government would formulate a policy laying down the parameters and guidelines to consider the cases as special cases. I have noted the contents of the said policy matters and same have been reproduced in earlier part of this judgment. The intention of the Government in this regard can not be faulted. It is only to be expected that such policy should be applied uniformly. I am conscious of the fact that in a matter of implementation of policy there is always a need of certain discretionary powers with the administration. At the same time, unlimited discretion and unguided and unbridled powers can only lead to arbitrary and discriminatory implementation of the policy. Now that the Government has laid down parameters for governing such cases, it would be necessary that such policy is followed in all cases. Within the parameters so laid down also, there

is sufficient discretion available with the Government to examine each case on its own merits.

15. Before this Court gives suitable directions in this regard, some of the contentions raised on behalf of the petitioners need to be dealt with. As noted earlier, learned advocate Ms.Vyas appearing for the petitioners submitted that even if the petitioners cannot be granted conversion with retrospective effect, the cases of the petitioners must be examined on the basis of the factual parameters obtaining at the time of making of the applications. It was submitted that the new policy being formulated by the Government cannot be applied to the petitioners for judging their cases.

16. I am afraid these contentions cannot be accepted. In whatever manner, the petitioners were granted permission to run educational institutions without grant-in-aid. They have been running the schools, in most of the cases, either through collection of fees from students or by raising funds independently. Whatever be the source, requiring the Government to release

grant for the past years would neither be economically possible nor just or equitable. The petitioners cannot be enriched for the past years for having run the schools through other means including by charging full fees from the students in some cases. Their stand that their cases should be considered on the basis of the earlier policy of the Government and in any case on the basis of factual matrix obtaining at the relevant time also cannot be accepted. Firstly, the petitioners can at best claim consideration of their applications on the basis of the prevailing Government policy. Secondly, this Court, prima facie found that there was no well laid down and well circulated Government policy to consider such cases. It was precisely because of this reason that the Court called upon the Government to specify its stand through affidavit. The Government has now come out with guidelines to consider such cases. It would be improper to require the Government to consider the applications of these petitioners without any reference to any guidelines simply because in the past in some cases the Government

had granted conversion from non-grant-in-aid to grant-in-aid institutions. The ground realities have undergone changes since the applications were made by the institutions to the Government. The applications, therefore, must receive consideration as the situation prevails at present on the basis of the current Government policy. Though in some cases, attempt has been made to point out that under identical circumstances some institutions were granted such conversion whereas the petitioners were denied such treatment, it is virtually impossible for this Court to come to the conclusion that two cases are exactly of same nature. There are wide variance of facts and circumstances and as observed by this Court in the case of Vidhya Sagar Education Trust (supra), each case would normally depend on its own facts. Therefore, the petitioners cannot base their claims on the basis of the conversion granted by the Government in the past in favour of certain institutions. If at all there were any irregularities and laxities shown by the Government while accepting the case of such

institutions, it may be a case to inquire further in this regard. That, however, by itself would not give a positive right in favour of the petitioners to claim parity. Equality is a well laid down positive concept and cannot be applied in negative (see State of Bihar v. Kameshwar Prasad Singh,(2000) 9 SCC 94) and no citizen has a right to insist that irregularity or illegality committed in favour of another person should be repeated in his case also (see case of State of M.P. v. Ramesh Kumar Sharma AIR 1994 SC 845).

17.The upshot of the above discussion would be that the Government should be asked to formulate and publish its policy for consideration of special cases for conversion of non-grant-in-aid school into grant-in-aid school. The respondents should apply such policy in future in all cases uniformly subject of course to budgetary allocations. This is however not to suggest that such policy must remain constant or stagnant. For valid consideration to meet with different requirements to adopt to changed circumstances, it would always be open to the

Government to modify the policy through subsequent GRs. Since it is found that in case of these petitioners, their applications have been turned down by the respondents time and again solely on the ground that they had at one stage agreed not to avail of grant while number of other institutions who had also given such undertakings were given grant, I find it appropriate that the Government should indicate its reasons for considering such applications in future. This would minimize the possibility of any discrimination as also enable the higher authorities or the courts to examine the reasons which weighed with the Government or its authorities in either granting or refusing such conversion. It would, therefore, be necessary that while dealing with, deciding and disposing of such applications, either accepting or refusing conversion, the authorities should record its reasons, however, brief the same may be. Observations made by the Hon'ble Supreme Court in the case of Mohinder Singh v. Chief Election Commissioner, reported in AIR 1978 SC 851 may be noted.

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):

> "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".
>
> Orders are not like old wine becoming better as they grow older.“

18.Under the circumstances, these petitions are disposed of by giving following directions:

i) The Government shall issue a G.R. laying down its policy for considering the cases as special cases for conversion from non-grant-in-aid to grant-in-aid institutions. Such a G.R. shall be issued along the line of the affidvit-in reply filed by Shri P.Panneervel on 8th March, 2006. This shall be done within a period of four weeks from the date of receipt of a copy of this order.

ii) In all future cases, application of interested institutions shall be considered by the competent authority applying the guidelines so laid down by the Government.

iii) While considering such applications, either accepting or rejecting, the authorities shall record and communicate the applicant its brief reasons for the conclusion.

iv) The applications of all the petitioners except those wherein the institutions have been closed down will be considered by the Government in light of the policy that may be circulated. Such consideration shall be prospective and on the basis of the

Government policy being framed. Such consideration shall be expeditious and the concerned institutions will be communicated the outcome thereof within a period of eight weeks from the date of receipt of a copy of this order.

v) Till the Government formulates its policy, the interim injunction granted by this Court by the order dated 13.2.2006 not to grant any further applications to any of the institutions shall continue. It is, however, clarified that once the Government policy is formulated as mentioned above, it will be open for the Government to consider all cases on the basis of such policy.

With the above directions, all the petitions are disposed of with no order as to costs. Rule is made absolute to the above limited extent.

(Akil Kureshi, J.)

(vjn)